DOCUMENT RESUME

ED 250 263 SO 016 039

AUTHOR	Howard, Estelle; And Others
TITLE	To Prosecute or Not? Enforcement of Federal Criminal Regulatory Statutes. Revised Edition. A Student's Lesson Plan [and] A Teacher's Lesson Plan [and] A Lawyer's Lesson Plan.
INSTITUTION	Constitutional Rights Foundation, Los Angeles, Calif.
PUB DATE	82
NOTE	46p.; For similar lesson plans on different legal issues, see SO 016 038-046.
AVAILABLE FROM	Constitutional Rights Foundation, 1510 Cotner Ave., Los Angeles, CA 90025 ($4.95).
PUB TYPE	Guides - Classroom Use - Guides (For Teachers) (052) -- Guides - Classroom Use - Materials (For Learner) (051)
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	*Case Studies; Conflict Resolution; Controversial Issues (Course Content); *Court Litigation; *Criminal Law; Discussion (Teaching Technique); *Federal Legislation; Law Enforcement; Laws; Learning Activities; *Legal Education; Lesson Plans; Role Playing; Secondary Education; Simulation; Units of Study
IDENTIFIERS	*Law Related Education; Mock Trials

ABSTRACT

One of a series of secondary level teaching units presenting case studies with pro and con analyses of particular legal problems, the document consists of a student's lesson plan, a teacher's lesson plan, and a lawyer's lesson plan for a unit about the enforcement of federal criminal regulatory statutes. The lesson plan presents an analysis of the questions a prosecutor has to weigh when considering whether a crime has been committed, who is to be charged, what the charge will be, and how to proceed with the prosecution of the case. Although similar in content, student and teacher lesson plans are presented separately to facilitate independent or small group work by students and to provide teachers with additional background information. Following a lawyer's visit to the classroom, students examine several cases to determine when a "gift" is a bribe. Subsequent sections present criminal case studies and analysis of the questions a prosecutor might face. A "walk through" mock trial illustrates how plea bargaining sessions between the prosecutor and defense probably would be carried out. A glossary, a brief reading on court systems, and a simplified view of federal and California court structures are included. The lawyer's lesson plan presents a more thorough discussion of cases, including thought-provoking questions for students. (LH)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

X This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"TO PROSECUTE OR NOT?"

Enforcement of Federal Criminal Regulatory Statutes

ED250263

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

Marshall Croddy

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

A Student's Lesson Plan

Prepared by Estelle Howard
Richard Weintraub
1982

All legal materials and presentations provided by the Constitutional Rights Foundation are intended strictly for academic purposes and may not reflect the current law of any particular jurisdiction.

The Constitutional Rights Foundation does not give legal advice. If any instructions supplied by the Foundation are suggestive of a solution to a personal problem, the recipient should seek independent professional judgment concerning the specific problem.

Copyright c 1977 by the
Revised Edition 1982

Constitutional Rights Foundation
1510 Cotner Avenue
Los Angeles, Calif. 90025

SP016039

TO PROSECUTE OR NOT?
(Enforcement of Federal Criminal Regulatory Statutes)

STUDENT'S LESSON PLAN

INTRODUCTORY UNIT #1

The role of the prosecuting attorney as the representative of the State (the people) is a very important one in our criminal justice system. A prosecutor has many decisions to make before bringing charges of a criminal act against a person because his fundamental duty is to protect the interests of the people by upholding the laws. In preparation for discussion with the visiting attorney about how a prosecutor decides whether a crime has been committed, who is to be charged, what the charge will be, how to proceed with the prosecution, etc., read "When Is A Gift A Bribe?" below and follow the instructions.

"WHEN IS A GIFT A BRIBE?"

The following incidents have to do with offering a public official a "gift" or a "bribe". Read each "case" carefully. When is a "gift" a bribe? Discuss your attitudes about this question with the class. Use the questions following each incident as a springboard to discussion.

CASE 1

A park ranger is about to ticket an automobile parked several hours in a no-parking fire lane. The owner approaches, expresses profuse apologies, and offers to move the automobile and give the park ranger five dollars not to write the ticket.

QUESTIONS

A. Would you say that the car owner has offered a bribe to the park ranger? Why? Why not?

B. Do you believe that even though only $5 is involved, the car owner has committed a criminal offense by offering the money to the park officer? Why? Why not?

C. If the car owner is charged with offering a bribe to an officer of the law, should he have the right to a jury trial? Why? Why not?

D. Do you think the county's prosecuting attorney (district attorney) should be concerned with a case of this nature? Why? Why not?

CASE 2

A traveler returning from a shopping spree in London, England, is discovered by a Customs Officer to have in his luggage three new and expensive English wool suits and a Swiss watch, which were not declared in the Customs declaration form. Immediately upon their discovery by the Customs Officer, the traveler pleads with the officer not to confiscate the items (which regulations require) and offers to give the officer the Swiss watch if the Customs Officer will overlook the three suits.

QUESTIONS

A. What would you do if you were the Customs Officer?

B. Do you think offering the "gift" of the watch to the Customs Officer is different from offering a $5 bill to the park ranger? Explain your reasoning.

CASE 3

An Internal Revenue Service auditor, after examining the tax returns for a small business, notes several major deductions which appear highly questionable. The auditor calls the owner down for a conference to provide more justification for the questioned deductions. At the conference, the owner indirectly suggests that if his deductions are allowed, the auditor will receive a case of expensive liquor when the tax return is finally approved.

The auditor ignores this and begins to carefully go through the supporting papers, and finally indicates they are not enough to justify the deductions. The worried taxpayer now offers the auditor $1,000 to approve the deductions.

QUESTIONS

A. If the IRS auditor had passed the deductions and subsequently received a case of liquor from the businessman, would you say that he had received a gift or a bribe? Explain your answer.

B. If you were the IRS auditor and received such a gift, what would you do? Why? What if you had found that the deductions were proper and had later received the liquor? Would you say that was a gift?

C. If the IRS auditor accepted the $1,000 offer made by the businessman, would he be as guilty as the businessman?

D. If the federal government were investigating the activities of IRS auditors with regard to accepting gifts, and you, as public prosecutor needed witnesses, would you offer the businessman immunity if he testified that the IRS man accepted $1,000 for approving unjustified deductions? Why would you offer not to prosecute one person in a situation where two persons appear to be involved in a crime?

CASE 4

Jacob Lewis, a Superior Court judge, for many years has received a bottle of fine wine at Christmas from his friend, Lawrence O'Dell, an attorney. Recently a case of vintage wine was delivered to his home. A note enclosed read, "Just received three cases of this outstanding wine from my client, Rosary Wineries. Knowing you would appreciate its excellence, I am happy to share this gift with you." The note was signed by Lawrence O'Dell.

QUESTIONS

A. Do you think it is wise for a public official to accept a gift from a person with whom he deals in his official capacity?

B. Do you think the Christmas present the attorney sent the judge each year was in fact a gift?

C. Do you think that when the attorney sends a case of wine instead of one bottle, he has changed a friendly gesture to a questionable gift? Why? Why not?

D. Do you think the attorney has committed a crime by sending the judge a yearly gift? Why? Why not? Do you think presenting such a gift is different from offering the Customs Officer the watch? What is the difference, if any?

INTRODUCTORY UNIT #2

Assume that you are the prosecuting attorney for the County of Stowfield, in the State of Caltexico. You are faced with a most unusual case and have to make a decision as to whether or not to prosecute a certain four men for murder.

The statute concerning murder in your state reads: "Whoever shall willfull take the life of another shall be punished by death." Read the case carefully. Consider all the facts before you make a decision. Use the questions and observations below as a springboard to class discussion on the legal and moral principles involved.

THE CASE OF THE SPELUNCEAN EXPLORERS*

Early in May five members of the Speluncean Society were exploring a cave situated in Stowfield County. While they were deep inside, a landslide occurred and heavy boulders completely blocked the entrance. Rescue operations started as soon as it was known that the men were trapped and continued for twenty days before there was any contact with the men inside the cave. In the course of the rescue operations, ten men were killed.

It became known that the spelunkers** had a portable wireless set with them and communication with the entrapped men was immediately established. The imprisoned men asked how much longer it would be before they were released and were told ten more days. William Watson, spokesman for the trapped group, said they had no more food, and asked for medical opinion as to whether they could last ten more days. When advised they could not, he asked if they could survive if they consumed the flesh of one of their group. Upon being told they could survive if that occurred, the cave prisoners turned off the wireless and ceased communication with the outside.

---

* Based on "The Case of the Speluncean Explorers", Lon L. Fuller, Harvard Law Review, Vol. 62, 1949.

** A "spelunker" is one who makes a hobby of exploring and studying caves.

Among themselves they agreed that one must give his life so the others could survive. They decided to abide by the throw of a pair of dice Watson had in his pocket as to whom the victim should be. The dice went against Watson. He was killed and eaten.

In due course the men were rescued. Should they be arrested and charged with murder?

QUESTIONS

A. If killing Watson was murder, was it willful murder?

B. Are the men innocent of murder because of the situation they were in?

C. Ten men were killed during the rescue operation. Why is it proper for 10 men to lose their lives trying to save five lives, but illegal for one life to be sacrificed to save four?

D. The act was committed in pursuance of an agreement accepted by all five entrapped men, so they had a contract. Was the contract in this case a valid one? Is the law of contracts more fundamental than the law against murder?

E. Were the five men outside the jurisdiction of the "state of civil society" when their survival depended upon following the "law of nature"?

F. As prosecutor should you consider any arguments for or against indictment other than the facts and the law pertaining to such facts?

GLOSSARY

BRIBERY - The offering, giving, receiving, or soliciting of anything of value in order to influence the actions of a public official.

COMPETITIVE BIDDING - The effort of two or more parties to secure the business of a third party by the offer of the most favorable terms.

CONTAMINATE - To make unfit for use by introduction of unwholesome or undesirable elements.

CULPABLE - Blamable; at fault; a person who has done a wrongful act (whether civil or criminal) is called "culpable".

FELONY - A serious crime usually with a sentence of a year or more.

INDICTMENT - A formal accusation of a crime, made against a person by a grand jury upon the request of a prosecutor.

MISDEMEANOR - A criminal offense less than a felony that is usually punishable by a fine or less than a year in jail.

PLEA - The defendant's formal answer to a criminal charge.

PLEA AGREEMENT - An agreement between the prosecutor and criminal defendant's lawyer where a guilty plea to certain charges is given in exchange for dismissal of other charges. The prosecutor may recommend a specific sentence, regardless of what specific charges are pled to.

PROSECUTOR - Public official who presents the government's case against a person accused of a crime and who asks the court to convict that person.

LAWYER-IN-THE-CLASSROOM UNIT

Prior to the lawyer's visit to the classroom examine the role of a federal prosecutor in the charing and resolution of federal cases. Study the case that will be analyzed. Read the questions carefully and be prepared to discuss them with the lawyer. Keep a list of questions you may have regarding the issue to put to the lawyer.

CASE

On March 17, 1975 Bradley Meat Company, Los Angeles, California, was awarded a Department of Defense contract, after competitive bidding, to supply U.S.D.A. (United States Department of Agriculture) Choice hamburger meat to the U.S. Army facility at Fort Arrow, Arizona. The contract called for weekly deliveries of a specified quantity of fresh meat in compliance with U.S.D.A. Choice standards.

On May 5, 1975, Harry Price, the manager of the Bradley Meat Company's processing plant, learned that the sides of beef purchased to supply the next several shipments of hamburger meat to Fort Arrow were diseased. Price immediately told his boss, Fred Overtons, the Company vice-president. They both agreed that the cost of purchasing good meat to replace the contaminated meat would cause a substantial loss to the Company.

Overtons and Price then agreed that they would try to bribe Hazel Neeley, the U.S. Department of Agriculture Meat Inspector, who inspects meat processed by the Bradley Meat Company.

On May 6, Price approached Neeley and offered her a bribe to approve the contaminated meat; Neeley agreed.

William Alexander Bradley III, president of Bradley Meat Company, did not know about the contaminated meat, nor about the agreement by Overtons and Price to bribe Needley. As Company president, Bradley is directly responsible for all phases of operations. Bradley never holds staff meetings and never goes to the processing plant, even though the U.S.D.A. had advised him on several occasions that his Company had delivered contaminated hamburger to commercial buyers.

The evening of May 6, Stanley Frankel, a long-time company butcher, while processing the contaminated meat into hamburger for Fort Arrow, discovered that the meat was contaminated.

Frankel immediately sought out Harry Price and informed him of his discovery and requested that Neeley be asked to reinspect the meat. Price told Frankel that his job was to butcher the meat, not inspect it, and to go back and finish the order. Frankel, fearful of losing his job, did what Price ordered, and the hamburger was shipped the next day.

On May 9, four soldiers at Fort Arrow became ill as a result of eating the contaminated hamburger. A test of the hamburger revealed that the entire shipment was contaminated.

QUESTIONS

A. Do you think anyone here should be charged with a crime?

B. What factors do you consider to be important in charging someone with committing a crime? How much money is involved? Whether someone is hurt? Whether there is intent to commit a crime?

C. How do these factors apply to the people in this case?

D. If you were a prosecuting attorney, what charges would you bring against the persons involved? The company? Would the charges you brought be the same against each individual? Should each person be charged with a separate crime? With every crime?

FOLLOW-UP UNIT #1

The following case and questions will give you an opportunity to apply the information gained from the Lawyer-in-the-Classroom Unit. Consider the facts in the case and what a prosecuting attorney might want to accomplish with these facts and the individuals involved in the crime. Base your reasoning on what you have learned from discussing the Bradley Meat Company Case. Use the questions as a springboard to classroom discussion of the procedure a prosecutor might take in this instance.

CASE

Mary Jane and her friend, Tom, are arrested at Disneyland for passing a counterfeit $20 bill. Secret Service agents are summoned. A search reveals Mary Jane and Tom each have three more counterfeit $20 bills in their possession.

Secret Service agents quickly learn each has passed several bills that day, generally for small-value purchases, receiving the change in legitimate money. At the time of their arrest, each was separately attempting to purchase a $2.98 stuffed animal with a counterfeit $20 bill, while they had over $30 in genuine currency in small bills on their person. (Knowingly possessing or passing (uttering) counterfeit currency is a federal offense.)

QUESTIONS

A. If you were the prosecuting attorney, would you charge Mary Jane and Tom with the crime of possessing and passing counterfeit money? Why? Why not?

B. Do you think the prosecuting attorney should be more interested in locating the source of the counterfeit money than in prosecuting Mary Jane and Tom? Why? Why not?

C. Do you think Mary Jane and Tom should be given the opportunity to make a plea agreement? Would it make a difference if they had prior criminal records? Why? Why not?

D. Do you think it would be in the public interest to offer Mary Jane and Tom immunity if they would give information on how to get to the "higher-ups"? Why would it be more important to get information on those who are printing and passing the counterfeit money to subordinates like Mary Jane and Tom than to prosecute these two for their crime?

E. If Mary Jane and Tom decide not to cooperate, you as prosecutor would have no alternative but to prosecute on felony charges for the knowing possession and passing of counterfeit money. Say Mary Jane and Tom plead not guilty to the charge, what facts could you use to prove your case?

FOLLOW-UP UNIT #2

According to the Crime Commission report, The Challenge of Crime in a Free Society, as many as 90% of all defendants convicted in this country are not tried. They plead guilty as a result of the negotiated plea process (plea bargaining). Plea negotiation has become an integral part of the criminal justice system, although there is great disagreement among jurists and law enforcement people as to its value and legal correctness.

So that you have an opportunity to examine the positive and negative aspects of this process, you will participate with your class in "The Plea Bargaining Game",* an activity which is designed to reflect what goes on in the courts where plea bargaining is used to reduce the heavy load of cases a judge has to face. This game is not a real mock trial but a "walk through" to illustrate how plea bargaining sessions between the prosecution and defense probably would be carried out before the case actually comes into court and how the court proceeds after plea agreement has been reached. The two parts of the process have been put together to carry the process through sentencing.

THE PLEA BARGAINING GAME

ROLES

1	Judge
1	Bailiff
1	Court Clerk
3	Deputy District Attorneys (Prosecutor)
3	Deputy Public Defenders (Defense Attorney)
2	Defense Attorneys available to be appointed by the judge to represent defendants without counsel
2	Defense Attorneys representing specific clients among the accused
0	Jurors (None required)
	Defendants

---

* Plea Bargaining Game, Bill of Rights Newsletter, Vol. VIII, No. 1, Spring, 1974, Constitutional Rights Foundation

The remainder of the class are the defendants accused of felony offenses. Each can select his/her crime and decide on his/her guilt or innocence before meeting with an attorney. The crimes from which the defendants can choose are as follows:

_____ Armed Robbery
_____ Burglary
_____ Auto Theft
_____ Assault with a Deadly Weapon

Each of you was arrested between two to six months prior to this day in court. You have had an opportunity to post bail by going to a bail bondsman. It has cost you or your family between $50 and $500 depending upon the seriousness of the charge as a fee for the bonding company to post your bail. Of your number, only a few have attorneys of their own or have been on bail release. The others have waited for their trial in the city or county jail. (In areas with an Own Recognizance Program,* a number of defendants have been released, pending trial, on only their promise to return.)

INSTRUCTIONS FOR PLAY

A. Organize the class so that the judge sits in front.

B. The attorneys sit facing the judge with those for the defense in a group on the left and those representing the prosecution on the right.

C. The defendants sit in rows behind the attorneys.

D. The bailiff calls the court to order.

E. The judge begins by saying, "All those having business before this the Honorable Court being present and accounted for we will now begin the day's proceedings."

F. The judge then designates at random the two defendants who will be represented by the private attorneys and the two to be represented by court-appointed attorneys. All other defendants will be represented by the Public Defenders. The judge will assign an equal number of cases to each public defender. The judge will indicate which group of cases each of the Deputy District Attorneys will handle.

---

* "Own Recognizance Program" - A method which allows the court to free an individual without bail on the assurance the person will appear in court when called.

G. The defense attorneys have 15 minutes to meet with each defendant individually. The defendant describes to his/her attorney the crime, whether or not he/she is guilty. The attorney explains that if he/she is willing to plead guilty to a less serious charge, the attorney will meet with the prosecutor in an effort to arrange for a reduction of the charge.

H. At the end of 15 minutes the defense attorneys meet with the prosecutors to whom they are assigned to discuss the possibility of reducing the charges in return for guilty pleas.

I. After another 15-minute period the judge calls the attorneys before him. The judge and the attorneys discuss each case and decide whether or not a reduced charge can be accepted. This discussion should take place in the judge's chambers (a separate space set aside in the room for private discussion). After the agreements are worked out, the defendants enter their new pleas in court and are sentenced accordingly by the judge.

After the game has been played and the defendants sentenced, have the class discuss their attitudes towards the plea bargaining process. Use the following questions as a guide for the conversation.

QUESTIONS

A. After completing the activity, how do you feel about plea bargaining? Did you feel that the defendant was hurried into a decision? That his/her attorney truly represented his/her interests?

B. Do you think it is a legitimate and/or a good way to get information that is needed to prosecute a "more important" crime?

C. Do you think plea bargaining is a good procedure because it eliminates a lengthy and costly trial?

D. Do you think judges and lawyers sometimes use this method to persuade defendants to plead guilty on the promise of a lighter sentence, even though the defendant claims he/she is innocent? What do you think of this concept?

E. Do you think the courts encourage plea bargaining to reduce the heavy case load they face? In the long run, is this a good administration of justice?

F. Do you think many defendants plea bargain because they are afraid of a harsh sentence if found guilty after a trial?

G. If you were a district attorney or a judge, would you favor or disfavor plea bargaining? What are your reasons?

COURT SYSTEMS

There are essentially three ways to categorize our courts. First, there are trial and appellate courts. The job of the trial courts is to find the facts in the case and apply the law to those specific facts. All cases start at the trial court level. The appellate courts focus on the law involved in the case. They do not review questions of fact, which the trial court decides. Appellate courts decide whether the trial judge erred in his interpretation of the law, and thus a case may reach an appellate court only after it has been heard in a trial court.

The second distinction is between criminal and civil courts. In a criminal case (where accused has harmed society and government, representing society, brings a case against him), the government accuses a person of violating a law for which a penalty is provided. It seeks to punish the accused by depriving him of his life, liberty, or property. In a civil case, one may also be deprived of his property (and sometimes his liberty), but for a different reason. The purpose of a criminal trial is to punish the offender; that of a civil trial (one person against another--between private citizens) is to compensate one person for a loss caused by another. Common cases where such liability may be found are automobile accidents, sale of faulty merchandise, and failure to pay rent.

Third, there are both state and federal court systems. (See Chart on Court Structures.) The federal district courts are the trial courts for all cases arising under the laws and Constitution of the United States. State courts have jurisdiction over all cases arising at common law* and equity** as well as all cases under the laws of the states as enacted by their legislatures. Most cases, both criminal and civil, are brought in the state courts. Within the state court system there may be a number of different trial and appellate courts having jurisdiction, or authority, over different types of cases and cases of different degrees of importance. For example, in California trial courts, a case in a large judicial district will be brought in either the municipal court or the superior court. The superior court handles the

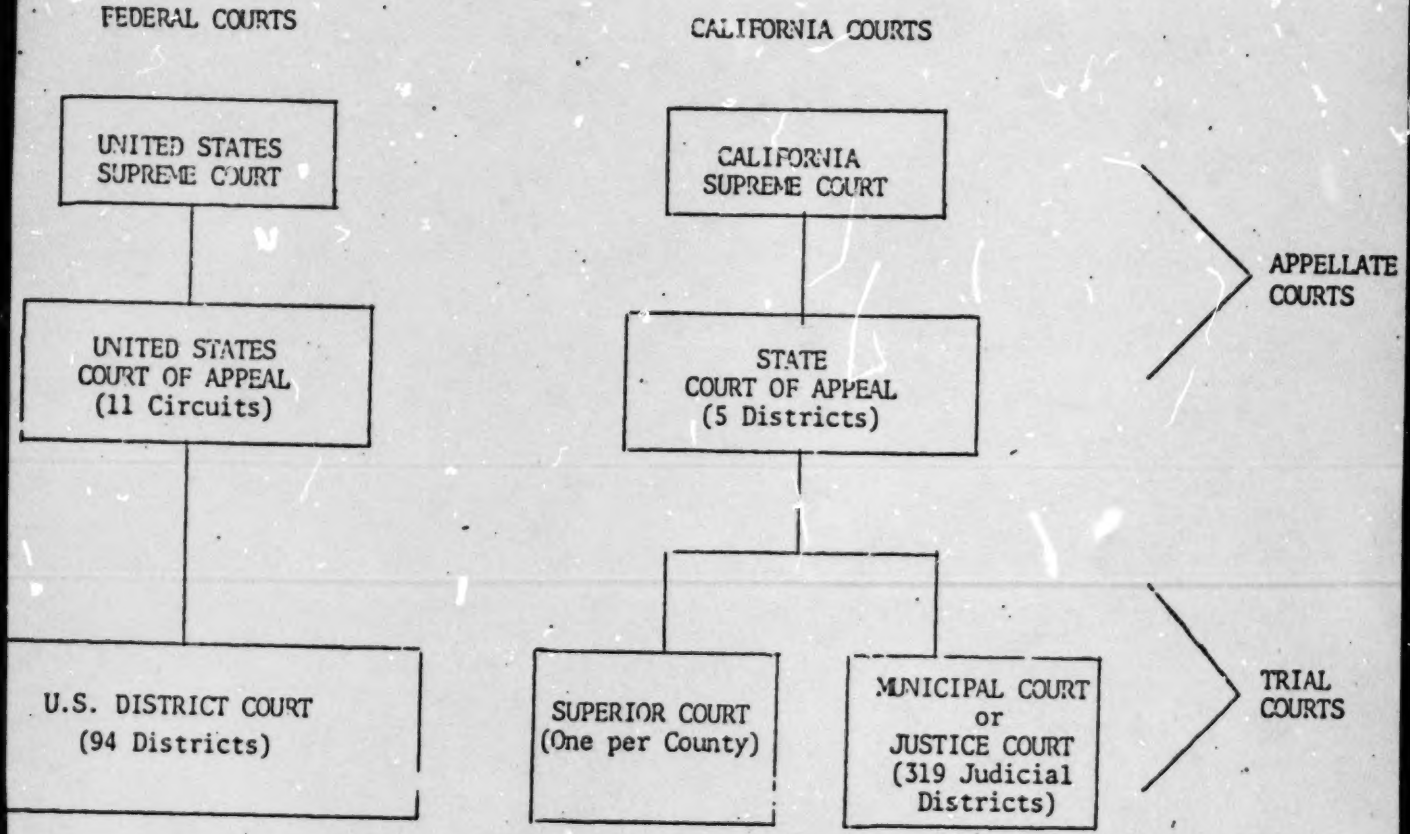
---

* Common law - Law that has its origins in England and grows from ever-changing custom and tradition. Judge-made law (as opposed to legislature-made law).

** Equity - A court's power to "do justice" where specific laws do not cover the situation.

more important cases--the felonies and civil cases involving over $5,000. But certain types of cases, such as divorce and probate, are brought only in superior court regardless of the amount in controversy. In the smaller judicial districts with a justice court instead of a municipal court, there is a similar division of the cases.

The federal court system has a similar structure. While there are a number of courts that handle only specialized matters, such as the customs court and tax court, most cases start in the federal district courts. Congress has strictly limited the types of cases that fall within the jurisdiction of these courts. One type is the diversity case where each party resides in a different state and the amount in controversy is over $10,000. The other type is a case involving a federal question, that is, one applying the federal constitution, statutes, or treaties.


FEDERAL COURTS
CALIFORNIA COURTS
UNITED STATES SUPREME COURT
CALIFORNIA SUPREME COURT
APPELLATE COURTS
UNITED STATES COURT OF APPEAL (11 Circuits)
STATE COURT OF APPEAL (5 Districts)
U.S. DISTRICT COURT (94 Districts)
SUPERIOR COURT (One per County)
MUNICIPAL COURT or JUSTICE COURT (319 Judicial Districts)
TRIAL COURTS

A SIMPLIFIED VIEW OF THE FEDERAL AND CALIFORNIA COURT STRUCTURES

"TO PROSECUTE OR NOT?"

Enforcement of Federal Criminal Regulatory Statutes

A Teacher's Lesson Plan

Prepared by Estelle Howard
Richard Weintraub
1982

All legal materials and presentations provided by the Constitutional Rights Foundation are intended strictly for academic purposes and may not reflect the current law of any particular jurisdiction.

The Constitutional Rights Foundation does not give legal advice. If any instructions supplied by the Foundation are suggestive of a solution to a personal problem, the recipient should seek independent professional judgment concerning the specific problem.

Copyright c 1977 by the
Revised Edition 1982

Constitutional Rights Foundation
1510 Cotner Avenue
Los Angeles, Calif. 90025

"TO PROSECUTE OR NOT?"
(Enforcement of Federal Criminal Regulatory Statutes)

TEACHER'S LESSON PLAN

This lesson plan follows a different format than the other plans included in "Law In The Schools" as it is not a case study with a pro and con analysis of the particular problem. "To Prosecute Or Not?" presents the questions a prosecutor has to weigh when considering whether a crime has been committed, who is to be charged, what the charge will be, how to proceed with the prosecution, etc. "To Prosecute Or Not?" will give students an opportunity to explore the role of the attorney representing the public and his/her responsibilities in the criminal justice system.

INTRODUCTORY UNIT #1

Prior to the lawyer's visit, discuss the following incidents with the class so they will understand what bribery is, what the law is concerning bribery, and what the difference is between a gift and a bribe. Use the questions that follow each "case" as a springboard to general discussion of giving "gifts" to public officials.

CASE 1

A park ranger is about to ticket an automobile parked several hours in a no-parking fire lane. The owner approaches, expresses profuse apologies, and offers to move the automobile and give the park ranger five dollars not to write the ticket.

QUESTIONS

A. Would you say that the car owner has offered a bribe to the park ranger? Why? Why not?

B. Do you believe that even though only $5 is involved, the car owner has committed a criminal offense by offering the money to the park officer? Why? Why not?

C. If the car owner is charged with offering a bribe to an officer of the law, should he have the right to a jury trial? Why? Why not?

D. Do you think the county's prosecuting attorney (district attorney) should be concerned with a case of this nature? Why? Why not?

CASE 2

A traveler returning from a shopping spree in London, England, is discovered by a Customs Officer to have in his luggage three new and expensive English wool suits and a Swiss watch, which were not declared in the Customs declaration form. Immediately upon their discovery by the Customs Officer, the traveler pleads with the officer not to confiscate the items (which regulations require) and offers to give the officer the Swiss watch if the Customs Officer will overlook the three suits.

QUESTIONS

A. What would you do if you were the Customs Officer?

B. Do you think offering the "gift" of the watch to the Customs Officer is different from offering a $5 bill to the park ranger? Explain your reasoning.

CASE 3

An Internal Revenue Service auditor, after examining the tax returns for a small business, notes several major deductions which appear highly questionable. The auditor calls the owner down for a conference to provide more justification for the questioned deductions. At the conference, the owner indirectly suggests that if his deductions are allowed, the auditor will receive a case of expensive liquor when the tax return is finally approved.

The auditor ignores this and begins to carefully go through the supporting papers, and finally indicates they are not enough to justify the deductions. The worried taxpayer now offers the auditor $1,000 to approve the deductions.

QUESTIONS

A. If the IRS auditor had passed the deductions and subsequently received a case of liquor from the businessman, would you say that he had received a gift or a bribe? Explain your answer.

B. If you were the IRS auditor and received such a gift, what would you do? Why? What if you had found that the deductions were proper and had later received the liquor? Would you say that was a gift?

C. If the IRS auditor accepted the $1,000 offer made by the businessman, would he be as guilty as the businessman?

D. If the federal government were investigating the activities of IRS auditors with regard to accepting gifts, and you, as public prosecutor needed witnesses, would you offer the businessman immunity if he testified that the IRS man accepted $1,000 for approving unjustified deductions? Why would you offer not to prosecute one person in a situation where two persons appear to be involved in a crime?

CASE 4

Jacob Lewis, a Superior Court judge, for many years has received a bottle of fine wine at Christmas from his friend, Lawrence O'Dell, an attorney. Recently a case of vintage wine was delivered to his home. A note enclosed read, "Just received three cases of this outstanding wine from my client, Rosary Wineries. Knowing you would appreciate its excellence, I am happy to share this gift with you." The note was signed by Lawrence O'Dell.

QUESTIONS

A. Do you think it is wise for a public official to accept a gift from a person with whom he deals in his official capacity?

B. Do you think the Christmas present the attorney sent the judge each year was in fact a gift?

C. Do you think that when the attorney sends a case of wine instead of one bottle, he has changed a friendly gesture to a questionable gift? Why? Why not?

D. Do you think the attorney has committed a crime by sending the judge a yearly gift? Why? Why not? Do you think presenting such a gift is different from offering the Customs Officer the watch? What is the difference, if any?

Information For The Teacher

Each of the first three cases is bribery. In each instance something of value is offered as an inducement to influence a public official to commit an act in violation of his lawful duty.

Case 4 is a gift. No favor has been sought or any attempt made to influence the judge through the giving of the gift.

"TO PROSECUTE OR NOT?"

Judicial definitions of bribery usually refer to bribery of a public official or bribery committed with regard to official action. Thus, bribery has been defined as the voluntary giving or receiving of anything of value in corrupt payment for an official act done or to be done, or with the corrupt intent to influence the action of a public person or any other person professionally concerned with the administration of public affairs.

The United States Code provides that anyone who promises, offers, or gives anything of value to any officer or employee or person acting on behalf of the United States with intent to influence him to commit or to aid in committing any act in violation of his lawful duty shall be punished.

The receiving or soliciting, as well as the giving or offering, of a bribe is a crime.

INTRODUCTORY UNIT #2

The hypothetical, "Case of the Speluncean Explorers", will give the students an opportunity to weigh the known facts in a situation and to reach a decision as to whether the facts are such that there is a firm legal basis to bring charges against several individuals.

Copy and distribute the materials in Introductory Unit #2 of the Student's Lesson Plan.

Ask the students to assume they are the prosecuting attorney for the County of Stowfield, in the State of Caltexico. The prosecuting officer is faced with a most unusual case and has to make a decision as to whether or not he should prosecute certain four men for murder.

THE CASE OF THE SPELUNCEAN EXPLORERS*

Early in May five members of the Speluncean Society were exploring a cave situated in Stowfield County. While they were deep inside, a landslide occurred and heavy boulders completely blocked the entrance. Rescue operations started as soon as it was known that the men were trapped and continued for twenty days before there was any contact with the men inside the cave. In the course of the rescue operations, ten men were killed.

It became known that the spelunkers** had a portable wireless set with them and communication with the entrapped men was immediately established. The imprisoned men asked how much longer it would be before they were released and were told ten more days. William Watson, spokesman for the trapped group, said they had no more food, and asked for medical opinion as to whether they could last ten more days. When advised they could not, he asked if they could survive if they consumed the flesh of one of their group. Upon being told they could survive if that occurred, the cave prisoners turned off the wireless and ceased communication with the outside.

---

* Based on "The Case of the Speluncean Explorers", Lon L. Fuller, Harvard Law Review, Vol. 62, 1949.

** A "spelunker" is one who makes a hobby of exploring and studying caves.

Among themselves they agreed that one must give his life so the others could survive. They decided to abide by the throw of a pair of dice Watson had in his pocket as to whom the victim should be. The dice went against Watson. He was killed and eaten.

In due course the men were rescued. Should they be arrested and charged with murder?

QUESTIONS

A. If killing Watson was murder, was it willful murder?

B. Are the men innocent of murder because of the situation they were in?

C. Ten men were killed during the rescue operation. Why is it proper for 10 men to lose their lives trying to save five lives, but illegal for one life to be sacrificed to save four?

D. The act was committed in pursuance of an agreement accepted by all five entrapped men, so they had a contract. Was the contract in this case a valid one? Is the law of contracts more fundamental than the law against murder?

E. Were the five men outside the jurisdiction of the "state of civil society" when their survival depended upon following the "law of nature"?

F. As prosecutor should you consider any arguments for or against indictment other than the facts and the law pertaining to such facts?

LAWYER-IN-THE-CLASSROOM UNIT

Copy and distribute the Lawyer-in-the-Classroom Unit in the Student's Lesson Plan. Ask the students to study the case and questions to be analyzed by the lawyer so they can discuss the issues with him/her.

The facts used here are derived from several recent cases. The students will be confronted with the same issues and decisions a federal prosecutor would be faced with in charging and prosecuting a case.

CASE

On March 17, 1975 Bradley Meat Company, Los Angeles, California, was awarded a Department of Defense contract, after competitive bidding, to supply U.S.D.A. (United States Department of Agriculture) Choice hamburger meat to the U.S. Army facility at Fort Arrow, Arizona. The contract called for weekly deliveries of a specified quantity of fresh meat in compliance with U.S.D.A. Choice standards.

On May 5, 1975, Harry Price, the manager of the Bradley Meat Company's processing plant, learned that the sides of beef purchased to supply the next several shipments of hamburger meat to Fort Arrow were diseased. Price immediately told his boss, Fred Overtons, the Company vice-president. They both agreed that the cost of purchasing good meat to replace the contaminated meat would cause a substantial loss to the Company.

Overtons and Price then agreed that they would try to bribe Hazel Neeley, the U.S. Department of Agriculture Meat Inspector, who inspects meat processed by the Bradley Meat Company.

On May 6, Price approached Neeley and offered her a bribe to approve the contaminated meat; Neeley agreed.

William Alexander Bradley III, president of Bradley Meat Company, did not know about the contaminated meat, nor about the agreement by Overtons and Price to bribe Needley. As Company president, Bradley is directly responsible for all phases of operations. Bradley never holds staff meetings and never goes to the processing plant, even though the U.S.D.A. had advised him on several occasions that his Company had delivered contaminated hamburger to commercial buyers.

The evening of May 6, Stanley Frankel, a long-time company butcher, while processing the contaminated meat into hamburger for Fort Arrow, discovered that the meat was contaminated.

Frankel immediately sought out Harry Price and informed him of his discovery and requested that Neeley be asked to reinspect the meat. Price told Frankel that his job was to butcher the meat, not inspect it, and to go back and finish the order. Frankel, fearful of losing his job, did what Price ordered, and the hamburger was shipped the next day.

On May 9, four soldiers at Fort Arrow became ill as a result of eating the contaminated hamburger. A test of the hamburger revealed that the entire shipment was contaminated.

QUESTIONS

A. Do you think anyone here should be charged with a crime?

B. What factors do you consider to be important in charging someone with committing a crime? How much money is involved? Whether someone is hurt? Whether there is intent to commit a crime?

C. How do these factors apply to the people in this case?

D. If you were a prosecuting attorney, what charges would you bring against the persons involved? The company? Would the charges you brought be the same against each individual? Should each person be charged with a separate crime? With every crime?

FOLLOW-UP UNIT #1

To give the students an opportunity to apply what they have learned about the role of the prosecutor in the criminal justice system, present the following fact situation for analysis and decision as to how it might be handled by a federal prosecutor. Use the questions to stimulate discussion. Copy and distribute the materials for Follow-Up Unit #1 in the Student's Lesson Plan.

CASE

Mary Jane and her friend, Tom, are arrested at Disneyland for passing a counterfeit $20 bill. Secret Service agents are summoned. A search reveals Mary Jane and Tom each have three more counterfeit $20 bills in their possession.

Secret Service agents quickly learn each has passed several bills that day, generally for small-value purchases, receiving the change in legitimate money. At the time of their arrest, each was separately attempting to purchase a $2.98 stuffed animal with a counterfeit $20 bill, while they had over $30 in genuine currency in small bills on their person. (Knowingly possessing or passing (uttering) counterfeit currency is a federal offense.)

QUESTIONS

A. If you were the prosecuting attorney, would you charge Mary Jane and Tom with the crime of possessing and passing counterfeit money? Why? Why not?

B. Do you think the prosecuting attorney should be more interested in locating the source of the counterfeit money than in prosecuting Mary Jane and Tom? Why? Why not?

C. Do you think Mary Jane and Tom should be given the opportunity to make a plea agreement? Would it make a difference if they had prior criminal records? Why? Why not?

D. Do you think it would be in the public interest to offer Mary Jane and Tom immunity if they would give information on how to get to the "higher-ups"? Why would it be more important to get information on those who are printing and passing the counterfeit money to subordinates like Mary Jane and Tom than to prosecute these two for their crime?

E. If Mary Jane and Tom decide not to cooperate, you as prosecutor would have no alternative but to prosecute on felony charges for the knowing possession and passing of counterfeit money. Say Mary Jane and Tom plead not guilty to the charge, what facts could you use to prove your case?

Information For The Teacher

In general, a prosecutor might agree to a minor charge or a deferred prosecution for Mary Jane or Tom if either agrees to, and does, immediately cooperate. Their past criminal record, if any, will be an important factor on the specific type of agreement made, together with their actual ability to help.

An important goal would be to locate the source of the counterfeit money, and confiscate as much as can be located, as well as prosecute those who are printing and passing the counterfeit currency. If the counterfeit is of high quality and has never been seen before, cooperation in identifying sources would be more valuable than identification of sources of an older, well circulated form of counterfeit.

A decision not to cooperate would leave the prosecuting attorney no alternative but to prosecute on felony charges for the knowing possession and passing. Facts such as: (1) a poor quality counterfeit bill; (2) using the counterfeit bill to make small purchases, where you would get a large amount of change in return; and (3) possessing ample amounts of small genuine currency at the time of the transaction are an excellent base for charging the defendants.

FOLLOW-UP UNIT #2

According to the Crime Commission report, The Challenge of Crime in a Free Society, as many as 90% of all defendants convicted in this country are not tried. They plead guilty as a result of the negotiated plea process (plea bargaining). Plea negotiation has become an integral part of the criminal justice system, although there is great disagreement among jurists and law enforcement people as to its value and legal correctness.

To give the students an opportunity to examine the positive and negative aspects of this process, engage them in the classroom activity, "The Plea Bargaining Game",* which is designed to reflect what goes on in the courts where plea bargaining is used to reduce the heavy load of cases a judge has to face. The following is not a real mock trial but a "walk through" to illustrate how plea bargaining sessions between the prosecution and defense probably would be carried out before the case actually comes into court and how the court proceeds after plea agreement has been reached. The two parts of the process have been put together to carry the process through sentencing. The game is designed for one class period to illustrate the pressure on our criminal courts. However, the teacher may elect to allow two classroom sessions for the game so that the time allotted for each step in the procedure can be lengthened. It is suggested that the visiting lawyer be asked to attend the classroom activity and debrief the students after completion of the game.

Copy and distribute the Follow-Up Unit #2 in the Student's Lesson Plan.

THE PLEA BARGAINING GAME

ROLES

1	Judge
1	Bailiff
1	Court Clerk
3	Deputy District Attorneys (Prosecutor)
3	Deputy Public Defenders (Defense Attorney)
2	Defense Attorneys available to be appointed by the judge to represent defendants without counsel
2	Defense Attorneys representing specific clients among the accused
0	Jurors (None required)
	Defendants

---

* Plea Bargaining Game, Bill of Rights Newsletter, Vol. VIII, No. 1, Spring, 1974, Constitutional Rights Foundation

The remainder of the class are the defendants accused of felony offenses. Each can select his/her crime and decide on his/her guilt or innocence before meeting with an attorney. The crimes from which the defendants can choose are as follows:

_____ Armed Robbery
_____ Burglary
_____ Auto Theft
_____ Assault with a Deadly Weapon

Each of you was arrested between two to six months prior to this day in court. You have had an opportunity to post bail by going to a bail bondsman. It has cost you or your family between $50 and $500 depending upon the seriousness of the charge as a fee for the bonding company to post your bail. Of your number, only a few have attorneys of their own or have been on bail release. The others have waited for their trial in the city or county jail. (In areas with an Own Recognizance Program,* a number of defendants have been released, pending trial, on only their promise to return.)

INSTRUCTIONS FOR PLAY

A. Organize the class so that the judge sits in front.

B. The attorneys sit facing the judge with those for the defense in a group on the left and those representing the prosecution on the right.

C. The defendants sit in rows behind the attorneys.

D. The bailiff calls the court to order.

E. The judge begins by saying, "All those having business before this the Honorable Court being present and accounted for we will now begin the day's proceedings."

F. The judge then designates at random the two defendants who will be represented by the private attorneys and the two to be represented by court-appointed attorneys. All other defendants will be represented by the Public Defenders. The judge will assign an equal number of cases to each public defender. The judge will indicate which group of cases each of the Deputy District Attorneys will handle.

---

* "Own Recognizance Program" - A method which allows the court to free an individual without bail on the assurance the person will appear in court when called.

G. The defense attorneys have 15 minutes to meet with each defendant individually. The defendant describes to his/her attorney the crime, whether or not he/she is guilty. The attorney explains that if he/she is willing to plead guilty to a less serious charge, the attorney will meet with the prosecutor in an effort to arrange for a reduction of the charge.

H. At the end of 15 minutes the defense attorneys meet with the prosecutors to whom they are assigned to discuss the possibility of reducing the charges in return for guilty pleas.

I. After another 15-minute period the judge calls the attorneys before him. The judge and the attorneys discuss each case and decide whether or not a reduced charge can be accepted. This discussion should take place in the judge's chambers (a separate space set aside in the room for private discussion). After the agreements are worked out, the defendants enter their new pleas in court and are sentenced accordingly by the judge.

After the game has been played and the defendants sentenced, have the class discuss their attitudes towards the plea bargaining process. Use the following questions as a guide for the conversation.

QUESTIONS

A. After completing the activity, how do you feel about plea bargaining? Did you feel that the defendant was hurried into a decision? That his/her attorney truly represented his/her interests?

B. Do you think it is a legitimate and/or a good way to get information that is needed to prosecute a "more important" crime?

C. Do you think plea bargaining is a good procedure because it eliminates a lengthy and costly trial?

D. Do you think judges and lawyers sometimes use this method to persuade defendants to plead guilty on the promise of a lighter sentence, even though the defendant claims he/she is innocent? What do you think of this concept?

E. Do you think the courts encourage plea bargaining to reduce the heavy case load they face? In the long run, is this a good administration of justice?

F. Do you think many defendants plea bargain because they are afraid of a harsh sentence if found guilty after a trial?

G. If you were a district attorney or a judge, would you favor or disfavor plea bargaining? What are your reasons?

Information For The Teacher

There are arguments on both sides of the issue.

On the positive side, the decision to use this plea negotiation process can be based on many different considerations. In some cases it is used by law enforcement to persuade an accused to provide information that is needed in other cases. It also eliminates the uncertainty of going to trial for both defense and prosecution. It also provides a means of eliminating the difficult and costly process of investigating a case fully enough for trial. There are also instances where the process provides the only way to lessen the seriousness of a sentence mandated for a certain charge.

On the negative side, some dangerous offenders may be able to take advantage of this process to obtain unjustifiably lenient sentences. The process can also be abused by lawyers and judges if threats of longer sentences are used to persuade defendants to plead guilty. It is also sometimes true that the primary interest of the courts in encouraging plea bargaining is to reduce the very heavy case load that they face.

According to the Crime Commission report, The Challenge of Crime in a Free Society, as many as 90% of all defendants convicted in this country are not tried. They plead guilty as a result of the negotiated plea process. While in the simplest kinds of cases a hurried conference between the defendant and his attorney may be sufficient, pleas are often negotiated in grave cases through a series of conferences held over the course of several weeks between prosecutor and defense counsel. The negotiated plea of former Vice-President Agnew typifies the way in which this process can be applied to serious cases. The Commission goes on to say that while "plea bargaining may be useful procedure especially in congested urban jurisdictions, . . . neither the dignity of the law nor the quality of justice or the protection of society from dangerous criminals is enhanced by its being conducted covertly." The implications of this process do not end with the courts alone, but affect each defendant and society as a whole.

COURT SYSTEMS

There are essentially three ways to categorize our courts. First, there are trial and appellate courts. The job of the trial courts is to find the facts in the case and apply the law to those specific facts. All cases start at the trial court level. The appellate courts focus on the law involved in the case. They do not review questions of fact, which the trial court decides. Appellate courts decide whether the trial judge erred in his interpretation of the law, and thus a case may reach an appellate court only after it has been heard in a trial court.

The second distinction is between criminal and civil courts. In a criminal case (where accused has harmed society and government, representing society, brings a case against him), the government accuses a person of violating a law for which a penalty is provided. It seeks to punish the accused by depriving him of his life, liberty, or property. In a civil case, one may also be deprived of his property (and sometimes his liberty), but for a different reason. The purpose of a criminal trial is to punish the offender; that of a civil trial (one person against another--between private citizens) is to compensate one person for a loss caused by another. Common cases where such liability may be found are automobile accidents, sale of faulty merchandise, and failure to pay rent.

Third, there are both state and federal court systems. (See Chart on Court Structures.) The federal district courts are the trial courts for all cases arising under the laws and Constitution of the United States. State courts have jurisdiction over all cases arising at common law* and equity** as well as all cases under the laws of the states as enacted by their legislatures. Most cases, both criminal and civil, are brought in the state courts. Within the state court system there may be a number of different trial and appellate courts having jurisdiction, or authority, over different types of cases and cases of different degrees of importance. For example, in California trial courts, a case in a large judicial district will be brought in either the municipal court or the superior court. The superior court handles the

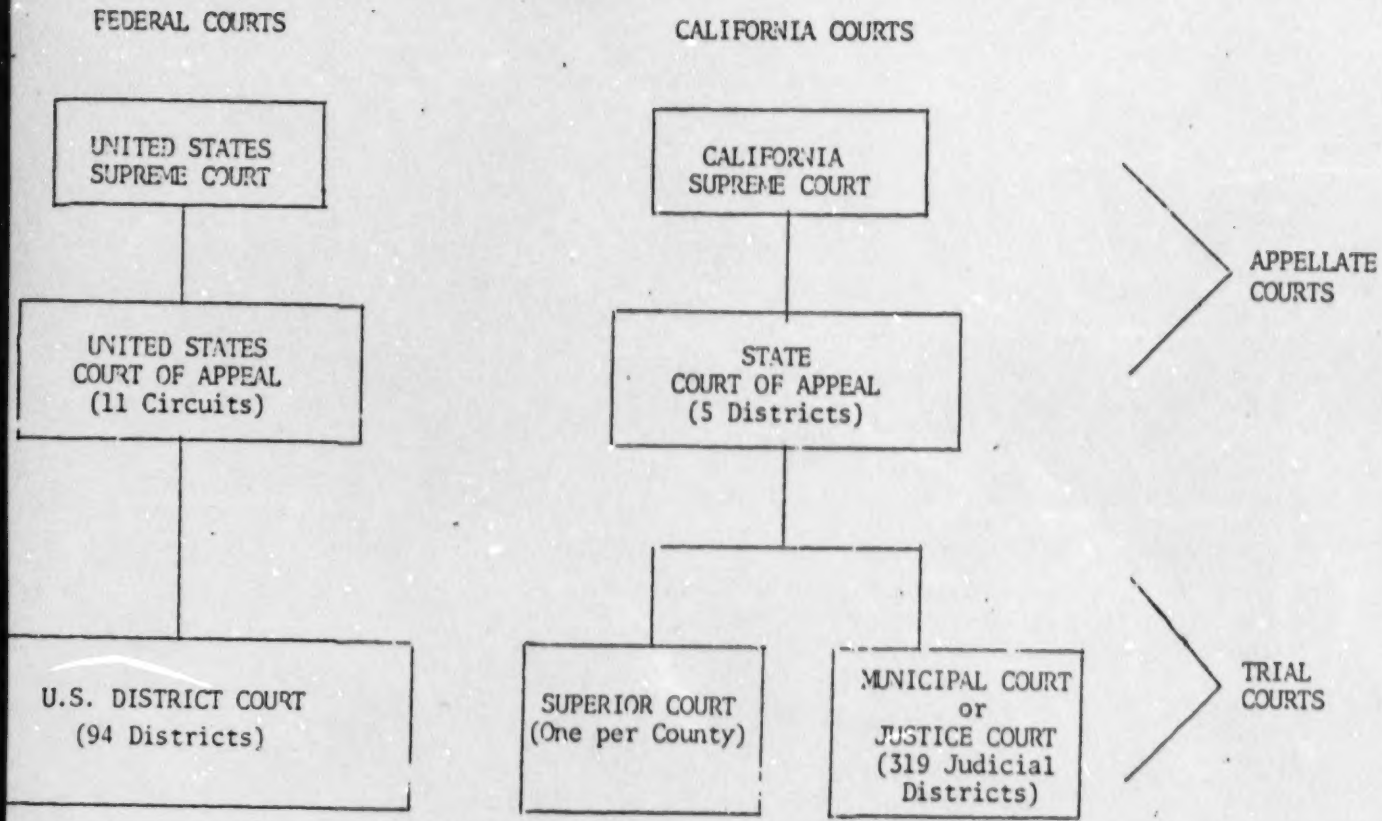
---

* Common law - Law that has its origins in England and grows from ever-changing custom and tradition. Judge-made law (as opposed to legislature-made law).

** Equity - A court's power to "do justice" where specific laws do not cover the situation.

more important cases--the felonies and civil cases involving over $5,000. But certain types of cases, such as divorce and probate, are brought only in superior court regardless of the amount in controversy. In the smaller judicial districts with a justice court instead of a municipal court, there is a similar division of the cases.

The federal court system has a similar structure. While there are a number of courts that handle only specialized matters, such as the customs court and tax court, most cases start in the federal district courts. Congress has strictly limited the types of cases that fall within the jurisdiction of these courts. One type is the diversity case where each party resides in a different state and the amount in controversy is over $10,000. The other type is a case involving a federal question, that is, one applying the federal constitution, statutes, or treaties.


FEDERAL COURTS
CALIFORNIA COURTS
UNITED STATES SUPREME COURT
UNITED STATES COURT OF APPEAL (11 Circuits)
U.S. DISTRICT COURT (94 Districts)
CALIFORNIA SUPREME COURT
STATE COURT OF APPEAL (5 Districts)
SUPERIOR COURT (One per County)
MUNICIPAL COURT or JUSTICE COURT (319 Judicial Districts)
APPELLATE COURTS
TRIAL COURTS

A SIMPLIFIED VIEW OF THE FEDERAL AND CALIFORNIA COURT STRUCTURES

GLOSSARY

BRIBERY - The offering, giving, receiving, or soliciting of anything of value in order to influence the actions of a public official.

COMPETITIVE BIDDING - The effort of two or more parties to secure the business of a third party by the offer of the most favorable terms.

CONTAMINATE - To make unfit for use by introduction of unwholesome or undesirable elements.

CULPABLE - Blamable; at fault; a person who has done a wrongful act (whether civil or criminal) is called "culpable".

FELONY - A serious crime usually with a sentence of one year or more.

INDICTMENT - A formal accusation of a crime, made against a person by a grand jury upon the request of a prosecutor.

MISDEMEANOR - A criminal offense less than a felony that is usually punishable by a fine or less than a year in jail.

PLEA - The defendant's formal answer to a criminal charge.

PLEA AGREEMENT - An agreement between the prosecutor and criminal defendant's lawyer where a guilty plea to certain charges is given in exchange for dismissal of other charges. The prosecutor may recommend a specific sentence, regardless of what specific charges are pled to.

PROSECUTOR - Public official who presents the government's case against a person accused of a crime and who asks the court to convict that person.

"TO PROSECUTE OR NOT?"

Enforcement of Federal Criminal Regulatory Statutes

A Lawyer's Lesson Plan

Prepared by Lawrence Campbell
1982

All legal materials and presentations provided by the Constitutional Rights Foundation are intended strictly for academic purposes and may not reflect the current law of any particular jurisdiction.

The Constitutional Rights Foundation does not give legal advice. If any instructions supplied by the Foundation are suggestive of a solution to a personal problem, the recipient should seek independent professional judgment concerning the specific problem.

Copyright c 1977 by the
Revised Edition 1982

Constitutional Rights Foundation
1510 Cotner Avenue
Los Angeles, Calif. 90025

TO PROSECUTE OR NOT?
(Enforcement of Federal Criminal Regulatory Statutes

LAWYER'S LESSON PLAN

Area of Law: Criminal Law

Specific Topic: Enforcement of Federal Criminal Regulatory Statutes

Objective: To explore the role of a federal prosecutor in the charging and resolution of federal crimes

NOTE TO VISITING LAWYER:

As the lesson plan "To Prosecute or Not?" is not a case study with a pro and con analysis of the particular problem, but rather an analysis of the questions a prosecutor has to weigh when considering whether a crime has been committed, who is to be charged, what the charge will be, how to proceed with the prosecution of the case, etc., the students can be given an opportunity to make some reasoned judgments concerning resolutions of the case presented.

It is suggested that the visiting attorney use the listed resolutions on page 5 as a class activity. Hold open discussion on resolutions A-E. Then ask individual students to present a resolution of the cases they believe would be appropriate to the fact situation and to explain why they would handle it in such a way.

The attorney should comment on the reasoning of each student, then either present the resolution suggested on page 5--or give his own opinion on what the disposition should be.

THE CASE

On March 17, 1975 Bradley Meat Company, Los Angeles, California, was awarded a Department of Defense contract, after competitive bidding, to supply U.S.D.A. (United States Department of Agriculture) Choice hamburger meat to the U.S. Army facility at Fort Arrow, Arizona. The contract called for weekly deliveries of a specified quantity of fresh meat in compliance with U.S.D.A. Choice standards.

On May 5, 1975, Harry Price, the manager of the Bradley Meat Company's processing plant, learned that the sides of beef purchased to supply the next several shipments of hamburger

meat to Fort Arrow were diseased. Price immediately told his boss, Fred Overtons, the Company vice-president. They both agreed that the cost of purchasing good meat to replace the contaminated meat would cause a substantial loss to the Company.

Overtons and Price then agreed that they would try to bribe Hazel Neeley, the U.S. Department of Agriculture Meat Inspector, who inspects meat processed by the Bradley Meat Company.

On May 6, Price approached Neeley and offered her a bribe to approve the contaminated meat; Neeley agreed.

William Alexander Bradley III, president of Bradley Meat Company, did not know about the contaminated meat, nor about the agreement by Overtons and Price to bribe Needley. As Company president, Bradley is directly responsible for all phases of operations. Bradley never holds staff meetings and never goes to the processing plant, even though the U.S.D.A. had advised him on several occasions that his Company had delivered contaminated hamburger to commercial buyers.

The evening of May 6, Stanley Frankel, a long-time company butcher, while processing the contaminated meat into hamburger for Fort Arrow, discovered that the meat was contaminated.

Frankel immediately sought out Harry Price and informed him of his discovery and requested that Neeley be asked to reinspect the meat. Price told Frankel that his job was to butcher the meat, not inspect it, and to go back and finish the order. Frankel, fearful of losing his job, did what Price ordered, and the hamburger was shipped the next day.

On May 9, four soldiers at Fort Arrow became ill as a result of eating the contaminated hamburger. A test of the hamburger revealed that the entire shipment was contaminated.

FEDERAL LAWS INVOLVED

A. It is a federal crime to bribe a USDA Meat Inspector (18 USC §201(b)).

B. It is a federal crime for a USDA Meat Inspector to accept a bribe (18 USC §201(c); 21 USC §622).

C. It is a federal crime to ship contaminated meat across state lines (21 USC §§610, 676).

D. It is a federal crime to aid or assist another in committing a crime (18 USC §2).

QUESTIONS AND DISCUSSION

A. Do you think anyone here should be charged with a crime? What factors do you consider to be important in charging someone with committing a crime? How do these factors apply to the people, and to the Company in this case?

DISCUSSION

The prosecutor has a wide range of alternatives available to him in dealing with persons suspected of violations of the criminal law. Initially, he has the responsibility to decide whether or not to prosecute. At any time after the initial charging decision the prosecutor may decide to modify his original judgment to proceed further or to proceed in a different manner, for example, by accepting a plea to a lesser charge. Even if he decides either not to charge or to terminate formal proceedings after charging, he may take action that is designed to result in non-criminal sanctions or diversion to non-criminal agencies.

In making the decision not to charge or to terminate formal proceedings, the prosecutor engages in "individualized justice". Accordingly, he will consider a myriad of factors as they relate to two basic standards: (1) the convictability of the accused and (2) the desirability of obtaining a conviction vis-a-vis pursuing some other course. In other words, the prosecutor determines not only whether he can convict, but also whether he should convict.

The first determination is based on the prosecutor's evaluation of the quantity and quality of the available evidence and the potential for successful prosecution. The second is more nebulous and is based on many considerations which may be extraneous to the issue of convictability. The following matters are reviewed: the gravity of the offense; the age and background of the accused; the prior criminal and/or social record of the subject; the degree of contrition and the recognition of fault by the subject; the civil administrative or employment penalty imposed upon the accused and such other considerations as may be appropriate under the circumstances.

The prosecutor in certain cases may decide formalized proceedings are not warranted after analyzing all the factors involved in the particular case and the background of the defendant. In such a case the defendant may be referred to the probation officer for an investigation and recommendation

as to that defendant's potential for rehabilitation. If the report is favorable, the defendant enters into a formal agreement deferring any prosecutive action for a one-year period. During this time the defendant is placed on a formal probation program. The successful completion of this program results in no charges being filed.

B. What crimes to you think the people in this case should be charged with? Should each person be charged with every crime?

DISCUSSION

By determining that proceedings, if any, will be initiated on behalf of the government, the prosecutor as an administrator, determines to a large extent what sanctions will be imposed on a particular defendant. He may select fewer than the maximum number of charges, or he may select all possible charges. In effect the prosecutor is fashioning a penalty framework within which the court will exercise its sentencing discretion.

An example of the prosecutor's flexible application of the criminal code is provided by the policy toward narcotics offenders. Their goal normally is to cath the "big fish" or supplier. As a result, the pusher or the addict often will be charged with a lesser offense or the action against him will be dismissed if he agrees to provide information to the police and in turn cooperate in the prosecution of the significant defendant.

C. Do you think some people should not be charged because the criminal acts were done to save the Company from a loss from its having bought contaminated meat?

1. Do you think it makes a difference if Price knew the meat was contaminated at the time he bought it instead of finding out only after the Company paid for it?

2. Would you charge the Company with any crimes even though such a charge might cause the Company to go bankrupt because of resulting publicity, fines, or other reasons (including inability to do any further business with the Department of Defense)?

Assuming the Bradley Meat Company played a significant part in the local economy, would you consider the impact on the area's work force in making your decision?

D. Do you think the USDA inspector should be charged even though she is a federal employee?

E. Do you think she should be charged even though she is a woman?

F. Should the Company itself be charged? Should it be charged if you also decide to charge some of the officers of the Company?

G. Should the Company President be formally accused of a crime? If so, which crime or crimes would you consider?

H. How should the prosecutor proceed after charging?

The vast majority of the criminal cases that are indicted in the federal system end in a plea. An accurate estimate of the percentage of pleas would be 80%. This means that 80 out of every 100 cases are disposed of without a trial. The great majority of this litigation is settled by bargained pleas. This form of disposition may be arrived at by two forms of bargaining: so-called plea bargaining and so-called sentence bargaining. The term "bargain" is a poor choice of words as it may be understood to mean that the accused is obtaining something to which he is not entitled. A more appropriate term for the product of the negotiations between the prosecutor and the defense attorney is agreement. The former refers to an agreement wherein a guilty plea to certain charges is given in exchange for dismissal of other charges. The latter refers to a plea on charges where the prosecution will recommend a specific sentence by the court, regardless of what specific charges are pled to. The two forms are often combined to reach one disposition, and are together broadly referred to as plea bargaining. Each is appropriate and has justifiable uses.

The Supreme Court has recognized that such plea negotiation is an integral part of the criminal justice system in Santobello v. New York, 404 U.S. 257 (1970) and Brady v. United States, 397 U.S. 742 (1970). Its use has been endorsed and its value to the criminal defendant and the public is acknowledged.

The justifications for bargained dispositions are several: defendants are benefitted because they are relieved of enforced idleness pending trial and of the risks and uncertainties of the trial itself. The state benefits from a prompt and largely final disposition of criminal cases, in part because shortened time between charge and disposition enhances the rehabilitative effect of the ultimate

sentence. Law enforcement and ultimately the public good are promoted by the process because it encourages defendants to provide information and otherwise to assist law enforcement officials. Finally, an important justification for plea agreement is system maintenance--the necessity of its use if most criminal offenders are to be processed cannot be questioned. A trial is not justified where an accused wishes to enter a guilty plea.

I. In your opinion would any of the following resolutions of this case be an appropriate resolution?

1. The Company pays all medical bills of the soldiers, agrees not to do it again, pays a $5,000 fine; the cases against everyone else are dismissed.

2. The Company President pleads guilty to a misdemeanor charge and agrees to resign; the cases against everyone else are dismissed.

3. The Company President pleads guilty to a felony charge; the cases against everyone else are dismissed.

4. Everyone pleads guilty as charged, but the government agrees to recommend that no one goes to jail.

5. The parties agree that the maximum sentences imposed will be one month (one year).

J. What resolution of this case would you suggest?

DISCUSSION

A typical resolution might be to charge Price and Overtons with bribing Neeley and to charge Neeley with accepting a bribe. In addition, the Company, Bradley, Price, Overtons might all be charged with shipping contaminated meat in interstate commerce. Frankel might not be charged because his degree of culpability was relatively slight and his testimony against everyone else would be needed for a successful prosecution of all charges. Moreover, Frankel might be allowed to plead to a misdemeanor so as to obtain his testimony against the others as well.

Finally, it is unlikely that any other resolution would be accepted, the prosecutor would probably recommend jail sentences for Price, Overtons, Neeley and a maximum fine for Bradley and the Corporation.

REFERENCES

Prosecutorial Distrection - A Symposium; 13 American Criminal Law Review 379 (1976)

The Standard for Criminal Responsibility under the Federal Food, Drug and Cosmetic Act

13 American Criminal Law Review 299 (1975)

United States v. Park, 421 U.S. 658 (1975)

All legal materials and presentations provided by the Constitutional Rights Foundation are intended strictly for academic purposes and may not reflect the current law of any particular jurisdiction.

The Constitutional Rights Foundation does not give legal advice. If any instructions supplied by the Foundation are suggestive of a solution to a personal problem, the recipient should seek independent professional judgment concerning the specific problem.